

Message Text

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DRAFTED BY EUR/CE:SMKLINGAMAN:DHT

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TO AMEMBASSY BERN IMMEDIATE

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E.O. 11652: N/A

TAGS: CFED, EFIN, SZ

SUBJECT: SEC ACTION AGAINST AMERICAN INSTITUTE
COUNSELORS ET AL.

REF: LEVINE-KEMPE TELECON

1. TEXTS OF TWO ORDERS ISSUED APRIL 7 BY JUDGE GESELL,
US DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, FOLLOW:

2. BEGIN TEXT: ORDER

THE SECURITIES AND EXCHANGE COMMISSION (SEC) HAVING
ORALLY MOVED IN OPEN COURT FOR A FURTHER ORDER AFFECTING
THE ASSETS OF UNITED STATES CITIZENS HELD BY THE
PROGRESS GROUP AND HAVING PRESENTED TO THE COURT FOR
CONSIDERATION IN SUPPORT OF THE MOTION A RECOMMENDATION
FROM SPECIAL COUNSEL, A DECREE OF THE SWISS BANKING
COMMISSION, DECLARATIONS AND STATEMENTS OF INTENTION OF
SAID COMMISSION AND THE SEC, AND A CONSENT AND UNDER-
TAKING OF THE PROGRESS GROUP; AND UPON CONSIDERATION OF
THE ORAL REPRESENTATIONS AND MATERIALS AFORESAID AND THE
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ORAL AND WRITTEN REPRESENTATIONS OF THE PARTIES, AND

HAVING DETERMINED THAT SAID DECREE PROVIDES THE BEST AVAILABLE METHOD FOR IDENTIFYING AND DETERMINING THE ASSETS IN QUESTION, WHICH IS ESSENTIAL TO FORMULATION

OF AN APPROPRIATE PLAN OR PLANS FOR SAFEGUARDING AND EVENTUALLY DISTRIBUTING SAID ASSETS CONSISTENT WITH THE PUBLIC INTEREST AND THE DESIRES OF THE SWISS GOVERNMENT, THE COURT ACCEPTS THE PROPOSED ORDER SUBJECT TO CERTAIN ADDITIONS AND MODIFICATIONS, AND ACCORDINGLY IT IS THEREFORE

ORDERED THAT

(1) THE SEC AND SPECIAL COUNSEL ARE AUTHORIZED TO ENGAGE IN THE ACTIVITIES CONTEMPLATED BY THE DECREE AND TO PROCEED FORTHWITH SUBJECT TO THE TERMS AND CONDITIONS SET FORTH HEREIN;

(2) THIS COURT APPROVES THE APPOINTMENT OF COOPERS & LYBRAND AS SPECIAL AUDITOR UNDER THE JUDGMENT OF PERMANENT INJUNCTION AND OTHER RELIEF ENTERED BY THIS COURT AGAINST AMERICAN INSTITUTE COUNSELORS, INC. AND AMERICAN INSTITUTE FOR ECONOMIC RESEARCH ON NOVEMBER 25, 1975, AND, BEING ADVISED THAT THE SWISS AUTHORITIES HAVE ALSO APPROVED, FURTHER AUTHORIZES AND APPOINTS COOPERS & LYBRAND TO PERFORM THE FUNCTIONS OF THE AUDITOR PROVIDED BY THE DECREE AND DIRECTS COOPERS & LYBRAND TO FILE WITH THIS COURT, CONSISTENT WITH THE TERMS OF THE DECREE, A COPY OF ANY AND ALL REPORTS, WHETHER INTERIM OR FINAL, WHICH IT FILES WITH THE SWISS BANKING COMMISSION IN CONNECTION WITH ITS ACTIVITIES UNDER THE DECREE;

(3) THE SPECIAL COUNSEL SHALL SUBMIT A REPORT TO THIS COURT CONTAINING HIS RECOMMENDATION AS TO THE APPROPRIATE MANNER AND METHOD OF DISTRIBUTION OF THE ASSETS HELD BY THE PROGRESS GROUP TO UNITED STATES INVESTORS BASED ON THE REPORT OF COOPERS & LYBRAND AND SERVE COPIES ON THE PARTIES;

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(4) THE SEC AND THE SPECIAL COUNSEL SHALL REPORT TO THIS COURT WITHIN 45 DAYS (WHICH MAY BE EXTENDED BY FURTHER ORDER OF THE COURT) ON THE PROGRESS BEING MADE UNDER (2) AND (3), ABOVE, AND OTHERWISE TO IMPLEMENT THE DECREE, AND AT THAT TIME INCLUDE RECOMMENDATIONS WITH RESPECT TO THE FEASIBILITY, IF ANY, OF MAKING ANY INTERIM DISTRIBUTION TO UNITED STATES INVESTORS; AND SUCH REPORTS SHALL BE SERVED ON THE PARTIES;

(5) ANY PARTY SERVED WITH A REPORT PURSUANT TO THIS ORDER MAY STATE ITS OBJECTIONS, IF ANY, IN WRITING WITHIN TEN DAYS AND SHALL FILE SUCH OBJECTIONS WITH THE COURT AND SERVE ALL PARTIES. NO DISTRIBUTION OF ANY ASSETS OR PAYMENTS TO INVESTORS SHALL BE MADE WITHOUT PRIOR APPROVAL OF THE COURT AFTER FULL NOTICE TO THE PARTIES WITH OPPORTUNITY TO BE HEARD. THE DELIVERY OF ASSETS RELATING TO RESERVED LIFE INCOME CONTRIBUTORS INTO THE UNITED STATES AS PROVIDED IN XIII OF THE DECREE SHALL NOT BE EFFECTUATED PENDING A HEARING ON THE QUESTION OF THE APPROPRIATENESS OF SUCH TRANSFER WHICH IS SET FOR 2:00 P.M. ON APRIL 23;

(6) PARAGRAPH 3(D) OF THE SUGGESTED ORDER AND THE CORRESPONDING PROVISIONS OF VIII.A (1) AND (2) OF THE CONSENT AND UNDERTAKING OF THE PROGRESS GROUP ARE REJECTED AS UNACCEPTABLE TO THE COURT;

(7) PRIOR TO THE SEC EXPRESSING SATISFACTION AS TO THOSE MATTERS CONCERNING WHICH, UNDER THE TERMS OF THE DECREE, ITS SATISFACTION IS REQUIRED, THE SEC SHALL APPLY TO THE COURT FOR ITS APPROVAL, WITH NOTICE TO THE PARTIES.

SIGNED: GERHARD A. GESELL, UNITED STATES DISTRICT JUDGE,
APRIL 7, 1976.

END TEXT.

3. BEGIN TEXT: ORDER

UPON CONSIDERATION OF THE WRITTEN AND ORAL ARGUMENTS OF COUNSEL AND THE ENTIRE RECORD HEREIN, IT IS HEREBY UNCLASSIFIED

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ORDERED THAT ANY PARTY WISHING TO OPPOSE OR SUPPORT THE MOTION OF RESERVE LIFE INCOME CONTRIBUTORS PROTECTIVE COMMITTEE TO INTERVENE SHALL FILE A WRITTEN STATEMENT OF

POSITION AND SUPPORTING AURHORITIES ON OR BEFORE APRIL 14, 1976; AND IT IS FURTHER

ORDERED THAT THE PRESENCE OF EDWARD C. HARWOOD ON APRIL 23 AS ORALLY REQUESTED BY THE COURT IS UNNECESSARY IN LIGHT OF THE COMPANION ORDER OF THIS DATE WHICH DEFERS ANY HEARING ON AND RESOLUTION OF THE OBJECTIONS RAISED AT ORAL ARGUMENT BY COUNSEL FOR DEFENDANT HARWOOD; AND IT IS FURTHER

ORDERED THAT ON OR BEFORE APRIL 22 PLAINTIFF SECURITIES AND EXCHANGE COMMISSION SHALL FILE A WRITTEN STATEMENT AS TO (1) THE CORPORATE OR BUSINESS STATUS OF EACH MEMBER OF THE PROGRESS GROUP AND ANY CHANGES IN SUCH STATUS, INCLUDING MATTERS PREVIOUSLY MENTIONED ORALLY, SUBSEQUENT TO THE DATE OF THE FILING OF THE COMPLAINT IN THIS ACTION, (2) THE STATUS OF THE NEW TRUSTEES OF AIC AND AIER PURSUANT TO SECTIONS IX AND X OF THE FINAL JUDGMENT OF PERMANENT INJUNCTION AND OTHER RELIEF, (3) THE STATUS OF ANY FOREIGN LITIGATION THAT RELATES TO OR CONCERNS THE SUBJECT-MATTER OF THE INSTANT SUIT, AND (4) ANY MATTERS IN WHICH AIC, AIER, SWISS CREDIT BANK, EDWARD C. HARWOOD, OR THE MEMBERS OF THE PROGRESS GROUP, ARE NOT IN COMPLIANCE WITH A CONSENT JUDGMENT OR OTHER OUTSTANDING ORDER OF THIS COURT.

SIGNED: GERHARD A. GESELL, UNITED STATES DISTRICT JUDGE,
APRIL 7, 1976.

END TEXT.

4. EMBASSY REQUESTED TO PASS TEXTS AS SOON AS POSSIBLE
TO BERNHARD MUELLER AND REPORT REACTION. SISCO

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